



PTO/SB/51 (10-05)
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REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)

20372-00101

I hereby declare that:

Each inventor's residence, mailing address and citizenship are stated below next to their name:

I believe the inventors named below to be the original and first inventor(s) of the subject matter which is described and claimed in patent number 6,261,291 granted July 17, 2001 and for which a reissue patent is sought on the invention entitled

ORTHOPEDIC IMPLANT ASSEMBLY

the specification of which

☒ is attached hereto.

☐ was filed on _____ as reissue application number _____

and was amended on _____
(if applicable)

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

☐ I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b). Attached is form PTO/SB/02B (or equivalent) listing the foreign applications.

I verily believe the original patent to be wholly or partly inoperative or invalid, for the reasons described below. (Check all boxes that apply.)

☐ by reason of a defective specification or drawing.

☒ by reason of the patentee claiming more or less than he had the right to claim in the patent.

☐ by reason of other errors.

At least one error upon which reissue is based is described below. If the reissue is a broadening reissue, such must be stated with an explanation as to the nature of the broadening:

The new claim 29 is broader than issued claims 1 and 23 of the U.S. Patent No. 6,261,291 in several aspects. New claim 29 includes a "stopping member" which does not require "a biased stopping member" as set forth in the issued claims. Moreover, claim 29 calls for a bore with posterior and anterior bore portions.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.178. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing this form, call 1-800-PTO-9199 and select option 2.

(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)		Docket Number (Optional) RD372-00101	
All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.			
Note: To appoint a power of attorney, use form PTO/SB/51.			
Correspondence Address: Direct all communications about the application to:			
<input type="checkbox"/> The address associated with Customer Number: 			
OR			
<input checked="" type="checkbox"/> Firm or Individual Name	Edward J. Lynch		
Address	One Market Spear Tower, Suite 2000		
City	San Francisco	State	CA Zip 94105
Country	United States of America		
Telephone	415 957-3067	Email	eilynch@duanemorris.com
WARNING: Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.			
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.			
Full name of sole or first inventor (given name, family name) David J. Talaber			
Inventor's signature		Date	
Residence 5185 Charlotte Way, Livermore, CA 94550		Citizenship U.S.	
Mailing Address Same			
Full name of second joint inventor (given name, family name) James R. Lloyd			
Inventor's signature James R. Lloyd		Date 12/04/06	
Residence 1080 Circle Dr., Elm Grove, WI 53122		Citizenship U.S.	
Mailing Address Same			
<input type="checkbox"/> Additional joint inventors or legal representative(s) are named on separately numbered sheets forms PTO/SB/02A or 02LR attached hereto.			



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REISSUE APPLICATION DECLARATION BY THE INVENTOR

Docket Number (Optional)

R0372-00101

I hereby declare that
Each inventor's residence, mailing address and citizenship are stated below next to their name:
I believe the inventors named below to be the original and first inventor(s) of the subject matter which is described and claimed
in patent number 6,261,291 granted July 17, 2001 and for which a
reissue patent is sought on the invention entitled _____

ORTHOPEDIC IMPLANT ASSEMBLY

the specification of which

☒ is attached hereto.

☐ was filed on _____ as reissue application number _____

and was amended on _____
(if applicable)

I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any
amendment referred to above.
I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

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below. (Check all boxes that apply.)

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☒ by reason of the patentee claiming more or less than he had the right to claim in the patent.

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**The new claim 29 is broader than issued claims 1 and 23 of the U.S. Patent
No. 6,261,291 in several aspects. New claim 29 includes a "stopping member"
which does not require "a biased stopping member" as set forth in the issued
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bore portions.**

[Page 1 of 2]

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Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS
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(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)

Docket Number (Optional)
R0372-00101

All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.

Note: To appoint a power of attorney, use form PTO/SB/81.

Correspondence Address: Direct all communications about the application to:

☐ The address associated with Customer Number.

OR

<input checked="" type="checkbox"/> Firm or Individual Name	Edward J. Lynch				
Address	One Market Spear Tower, Suite 2000				
City	San Francisco	State	CA	Zip	94105
Country	United States of America				
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WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.

Full name of sole or first inventor (given name, family name)

David J. Talaber

Inventor's signature

David J. Talaber

Date

12/4/06

Residence

5185 Charlotte Way, Livermore, CA 94550

Citizenship

U.S.

Mailing Address

Same

Full name of second joint inventor (given name, family name)

James R. Lloyd

Inventor's signature

Date

Residence

1080 Circle Dr., Elgin Grove, WI 53122

Citizenship

U.S.

Mailing Address

Same

☐ Additional joint inventors or legal representative(s) are named on separately numbered sheets forms PTO/SB/02A or 02LR attached hereto.



LIMITED LIABILITY COMPANY AGREEMENT

OF

ACANTHA, LLC

THESE INTERESTS HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER ANY FEDERAL OR STATE SECURITIES LAWS. THESE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFER AND MAY NOT BE TRANSFERRED EXCEPT AS PERMITTED UNDER FEDERAL AND STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

LIMITED LIABILITY COMPANY AGREEMENT
OF
ACANTHA, LLC

This Limited Liability Company Agreement (this "Agreement") of Acantha, LLC, a Delaware limited liability company (the "Company") is entered into as of May 12, 2002 (the "Effective Date"), by and among David J. Talaber (the "Managing Member"), James R. Lloyd, M.D., Mark Robinson and Mark Schroeder, Esq. (collectively, the "Initial Members") and such other persons who are admitted as Members of the Company pursuant to the terms of this Agreement. Capitalized terms not otherwise defined in the Agreement are defined in Article 2.

BACKGROUND

A. On April 26, 2002, the Certificate of Formation (the "Certificate") for the Company was filed with the Delaware Secretary of State pursuant to the Delaware Limited Liability Company Act (the "Act").

B. Prior to the Effective Date, the Company did not engage in any business and did not acquire any assets.

C. Prior to the Effective Date, each of the Initial Members advanced certain funds (each, a "Prior Advance") in connection with developing and securing a patent for the Orthopedic Implant Assembly (US Patent #2,261,291) (the "Patent") and developing a cervical plate prototype. The Prior Advances will be treated as initial contributions to the capital of the Company by the Initial Members as of the Effective Date.

D. The Initial Members desire to enter into this agreement as their limited liability company agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1
GENERAL PROVISIONS

1.1 Formation. Pursuant to the Act, the Members have formed a limited liability company under the laws of the State of Delaware by filing the Certificate with the Delaware Secretary of State and by entering into the this Agreement.

1.2 Name. The name of the Company is "Acantha, LLC," or such other name as the Managing Member from time to time may determine. Prompt notice of any change to the name will be given to all Non-Managing Members.

1.3 Principal Office. The Company's principal office will be located at 5185 Charlotte Way, Livermore, California 94550, or such other place as the Managing Member from

time to time may determine. Prompt notice of any change in the location of the principal office will be given to all Non-Managing Members.

1.4 Term. The term of the Company began on the date the Certificate was filed with the Delaware Secretary of State, and will continue until the Company is dissolved and its affairs wound up in accordance with this Agreement.

1.5 Registered Agent and Office. The Company will continuously maintain within the State of Delaware (i) a registered agent for service of process on the Company, which agent will be the person designated in the Certificate, as it may be amended from time to time, and (ii) a registered office which need not be a place of business, which office will be at the location stated in the Certificate, as it may be amended from time to time.

1.6 Business of the Company. The business and purpose of the Company will be to engage in any lawful business for which limited liability companies may be organized under the Act, including but not limited to:

(a) The development, production, marketing and exploitation for profit of the Patent, by way of license or sale, and/or by way of the manufacture and distribution of devices or products which incorporate the technology embodied in the Patent; and

(b) Such other activities related to the foregoing business as may be necessary or advisable in the opinion of the Managing Member to further such business.

1.7 Property. All property, real and personal, of the Company will be owned by, and legal title held in the name of, the Company, and any conveyance from or to the Company will be in the Company's name. No Member will have any ownership interest in the property of the Company. Each Member's interest in the Company will be personal property.

1.8 Partnership Classification. It is the intention of the parties hereto that the Company be treated as a partnership for federal and state income tax purposes. The Company will not elect to be treated as a corporation under section 1.7701-3(c) (or any corresponding applicable provisions of federal, state, foreign or local law), and the Company and each Member will file all tax returns and will otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

ARTICLE 2 DEFINITIONS

The following terms used in this Agreement will have the meanings set forth below:

"Act" means the Delaware Limited Liability Company Act, as it may be amended from time to time.

“Affiliate” means, with respect to a specified person, any other person which directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the person in question.

“Agreement” means this Limited Liability Company Agreement, as originally executed and as amended from time to time.

“Applicable Tax Rate” means the maximum combined federal income tax rate and state income tax rate of the state in which the Company has its principal place of business, applicable to individuals from time to time, taking into account the effect of the deductibility of the applicable state income taxes in computing federal income taxes.

“Bankruptcy Event” means, with respect to any person, (a) the entry of a decree or order for relief by a court having jurisdiction in respect of such person in an involuntary case under federal or state bankruptcy or insolvency law, or the appointment of a receiver, assignee, or trustee for such person or for any substantial part of his property, or the issuance of an order for the winding-up or liquidation of his affairs and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days, or (b) the commencement by such person of a voluntary proceeding seeking any decree, order or appointment referred to in clause (a) or the consent by such person to any such decree, order or appointment.

“Capital Account” means an account maintained for each Member as provided in Section 4.1.

“Capital Contribution” means with respect to any Member the amount of money and the fair market value of any property other than money (net of liabilities assumed or taken subject to by the Company) contributed by the Member with respect to the Interest held by such Member, as determined by such Member and the Company.

“Certificate” means the Certificate of Formation for the Company filed with the Delaware Secretary of State, as amended from time to time.

“Code” means the Internal Revenue Code of 1986, as amended (or any corresponding provision of succeeding law).

“Company” means Acantha, LLC, a Delaware limited liability company.

“Default Interest Rate” means the highest rate of interest permitted under the laws of the state in which the Company has its principal office.

“Effective Date” means the effective date of this Agreement, as first set forth above.

“Initial Members” means David J. Talaber, James R. Lloyd, M.D., Mark Robinson and Mark Schroeder, Esq.

“Interest” means the entire ownership interest of a Member in the Company at any particular time, including the right of such Member to any and all benefits to which a Member may be entitled as provided in this Agreement.

“Majority in Interest” means Members holding more than 50% of the Percentage Interests held by all Members.

“Managing Member” means David J. Talaber, and any additional or substitute managing member admitted to the Company in accordance with the terms of this Agreement.

“Member” means each person who is listed on Appendix A as a Member, and any additional or substitute Member admitted to the Company in accordance with the terms of this Agreement, except as otherwise provided herein.

“Member Termination Event” means as to any Member, the occurrence of a Bankruptcy Event as to such Member, or as to any Member that is an individual, the death or adjudicated incompetency of such individual, or as to any Member that is a corporation, partnership or other entity, the dissolution of such entity.

“Net Income” or “Net Loss,” as the case may be, for any period, means an amount equal to the Company’s income or loss for such period as determined by the Company’s accountants in accordance with tax accounting principles consistently applied, with such adjustments as may be necessary or appropriate to comply with the provisions of Regulations Section 1.704-1(b)(2)(iv).

“Non-Managing Member” means any Member who is not the Managing Member.

“Patent” is defined in Recital C of this Agreement.

“Percentage Interest” as to each Member, means the percentage by which such Member’s interest in the Net Income or Net Loss of the Company generally will be measured. Except as otherwise expressly provided in this Agreement, Percentage Interests will be determined from time to time by dividing a Member’s aggregate Capital Contributions by the aggregate Capital Contributions of all the Members.

“Prior Advance” is defined in Recital A of this Agreement.

“Regulations” means the income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Transfer” means a sale, exchange, transfer, assignment, pledge, encumbrance or other disposition of an Interest, or a right to share in the Net Income or Net Loss of the Company or to receive distributions from the Company. “Transferee” means the recipient of a Transfer of an Interest, and “Transferor” means the person making such Transfer.

ARTICLE 3
CAPITAL CONTRIBUTIONS AND LOANS

3.1 Initial Contributions. Each Member's total initial Capital Contributions are set forth opposite such Member's name on Appendix A, and consist of the following components:

(a) Prior Advances. Each Initial Member will be deemed to have contributed to the capital of the Company as of the Effective Date the amount of his Prior Advance, as set forth opposite his name on Appendix A.

(b) Cash Contributed at Effective Date. As of the Effective Date, each Initial Member will contribute to the capital of the Company cash in the amount set forth opposite his name on Appendix A.

(c) Patent Assignment. On or around the Effective Date, certain of the Initial Members have assigned to the Company, as a contribution to capital, the Patent and all related rights, pursuant to that certain Patent Assignment, a copy of which is attached hereto as Exhibit A. Solely for purposes of determining the Members' initial Capital Account balances, no value is being given to the Patent and related rights, and no credit for such contribution is being made to the Capital Accounts of the Members who made that assignment.

3.2 Additional Contributions.

(a) Capital Calls. The Company has the right, in the Managing Member's sole discretion, to require the Initial Members to make additional Capital Contributions in one or more installments, in the aggregate amount of \$100,000 (a "Capital Call"). Each Initial Member hereby agrees to contribute in cash on or before the due date his share (based on each Member's Percentage Interest) of any Capital Call. Capital Calls, if made, will be made in accordance with this Section 3.2(a).

(i) Procedures for Capital Calls. The Managing Member will make a Capital Call by delivering notice to each of the Initial Members. Such notice will set forth the amount being called, each Member's share (based on respective Percentage Interests) of the Capital Call and the due date of such payment. Any such notice will be delivered at least five (5) business days prior to such due date.

(ii) Enforcement of Contributions. In the event any Initial Member fails to contribute any portion of that Member's Capital Call when due, the Managing Member will give such Member (a "Delinquent Member") a notice of the failure (a "Default Notice"). If the Delinquent Member fails to cure the default (including any costs associated with such default, including the cost of demanding compliance with the call and interest at the Default Interest Rate on such obligation from the due date) within three (3) days of the giving of the Default Notice, the Managing Member may pursue any remedy in law or at equity that he may choose, in his discretion, including but not limited to:

(A) Enforcing the Capital Call in a court of appropriate jurisdiction in the state in which the Company's principal office is located.

(B) Allowing the other Initial Members to contribute the amount of the unpaid Capital Call (in proportion to their respective Percentage Interests). Those Members who elect to contribute (the "Contributing Members") will be entitled to treat the amounts contributed pursuant to this Section 3.2(a)(ii)(B) either:

(1) as loans to the Delinquent Member, in which case such loans will bear interest at the Default Interest Rate, secured by the Delinquent Member's Interest in Company, and until they are fully repaid, the Contributing Members will be entitled to receive all distributions to which the Delinquent Member would have been entitled, such distributions to be credited first to the payment of interest, and then to the repayment of the principal amount loaned; or

(2) as additional Capital Contributions, in which case, each Contributing Member's Percentage Interest will be adjusted in accordance with the definition of "Percentage Interest" under this Agreement.

(C) Having the Company redeem the Delinquent Member's Interest for the lesser of (A) the Capital Contributions made by such Member (reduced by any previous distributions to such Member), or (B) such Member's Capital Account balance.

(b) No Further Requirement. Except as provided in Section 3.2(a), no Member will have any further obligation to make any additional Capital Contributions (or to provide any additional funds) to the Company for any reason. If the Company needs additional funds for any reason, the Managing Member may cause the Company to seek and accept additional capital in exchange for the issuance of additional Interests to new or existing Members on such terms as the Managing Member determines to be fair and appropriate and without the other Members' consent, provided that all existing Members are given the opportunity to participate in the purchase of such additional Interests on the same terms as are offered to others.

3.3 Loans by Members. No Member will be required to make loans to the Company. Loans may be made, however, by any Member to the Company and will not be considered Capital Contributions. The amount of any such loan will be a debt due from the Company to such lending Member. The terms and conditions of such loans will be determined by the Managing Member and, if the Managing Member is the lender, such terms will not be less favorable to the Company than the terms and conditions that the Managing Member determines that the Company could obtain from commercial lenders.

ARTICLE 4 CAPITAL ACCOUNTS, DISTRIBUTIONS AND ALLOCATIONS

4.1 Capital Accounts.

(a) General. A Capital Account will be maintained for each Member in accordance with Regulations Sections 1.704-1(b) and 1.704-2. Each Member's Capital Account generally will equal that Member's Capital Contributions, increased by allocations of Net Income

and other items of income and gain, and reduced by distributions and by allocations of Net Loss and other items of loss and deduction.

(b) Transfers. If any Interest in the Company is transferred in accordance with the terms of this Agreement, the Transferee will succeed to the Capital Account of the Transferor to the extent it relates to the transferred Interest.

(c) Discretion to Modify. The foregoing provisions and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations Sections 1.704-1(b) and 1.704-2, and will be interpreted and applied in a manner consistent with such Regulations. If the Managing Member determines that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits thereto, are computed to comply with such Regulations, the Managing Member may make such modification, provided that he determines that such modification will have no material adverse effect on the aggregate amounts distributable to any Member pursuant to this Agreement.

4.2 Distributions.

(a) General. Distributions will be made at such times and in such amounts as may be approved by the Managing Member, after paying, or establishing sufficient reserves for, all Company expenses, including debt payments, fees, reimbursements and contingencies. Distributions, if any, will be made to the Members in proportion to their Percentage Interests.

(b) Tax Distributions. The Managing Member will endeavor to cause distributions to be made each year in an amount at least equal to the Applicable Tax Rate multiplied by the taxable income of the Company.

(c) Distributions in Kind. If any assets of the Company are distributed in kind, such assets will be distributed on the basis of the fair market value thereof, as reasonably determined by the Managing Member. All such distributions will be in the same proportion as if such distribution had been made in cash.

4.3 Allocation of Net Income and Net Loss. After giving effect to the special allocations set forth in Section 4.4, Net Income or Net Loss for any period will be allocated among the Members in accordance with their Percentage Interests.

4.4 Special Allocations.

(a) Compliance with 704(b) Regulations. Notwithstanding the foregoing, no allocation of any item under Section 4.3 will be made unless it would be considered, under the Regulations promulgated under Code Section 704(b) (the "704(b) Regulations"), either to have substantial economic effect, or to be in accordance with the Members' interests in the Company. To the extent necessary to comply with the foregoing, in lieu of the allocations set forth in Section 4.3, the Managing Member may cause the Company's items of income, gain, loss, deduction, expense or credit to be reallocated among the Members in such manner as he may, in his absolute discretion, determine to be fair and appropriate and consistent with the provisions of the 704(b) Regulations, including without limitation the provisions of Regulations Section 1.704-2(f) (minimum gain chargeback), Section 1.704-2(i)(4) (partner nonrecourse debt minimum gain

chargeback), and Section 1.704-1(b)(2)(ii)(d) (qualified income offset), each of which is incorporated herein by this reference.

(b) Avoiding Deficit Capital Accounts. Special allocations of income or gain may be made to any Member if the Managing Member determines that such Member's Capital Account otherwise would have a deficit Capital Account balance that (in absolute value) exceeds the maximum deficit balance that would be permitted under the 704(b) Regulations.

(c) Loss. If any allocations of loss, deduction, or expense would result in a deficit balance in a Member's Capital Account that would (in absolute value) exceed the maximum deficit balance that would be permitted under the 704(b) Regulations, some or all of such items may be reallocated to any other Members whose Capital Accounts would not have such excess deficit balances (in proportion to their respective interests).

(d) Subsequent Allocations. If any allocations are made under Sections 4.4(a) through (c) (the "Regulatory Allocations"), the Managing Member may take such Regulatory Allocations into account in making subsequent allocations of income, gain, loss, deduction, or expense, and may make such further special allocations as may be necessary or appropriate so as to prevent the Regulatory Allocations from distorting the manner in which Company distributions will be divided among the Members pursuant to this Agreement.

4.5 Tax Allocations. For purposes of reporting each Member's share of federal, state and any applicable local income taxes, items of income, gain, loss, deduction and credit will be allocated in accordance with the provisions of Code Section 704(c) and the Regulations promulgated thereunder, so as to properly take into account any variation between the adjusted tax basis and the book value of Company assets, using any method that complies with Regulations Section 1.704-3 as the Managing Member deems appropriate.

ARTICLE 5 MEMBERS

5.1 Limited Liability. Except as required under the Act or as expressly set forth in this Agreement, no Member will be personally liable for any debt, obligation, or liability of the Company, whether that liability or obligation arises in contract, tort, or otherwise.

5.2 Admission of Additional Members. Additional Members may be admitted from time to time pursuant to the terms of this Agreement. All additional Members will execute and deliver such number of counterpart signature pages to this Agreement as the Managing Member may require, evidencing such Member's intent to be bound by all of the terms and conditions of this Agreement. Appendix A will be amended (without the requirement of Member approval) to reflect each issuance of additional Interests. This Agreement will be deemed amended (without the requirement of Member approval) to accommodate any such admission of additional Members as determined by the Managing Member.

5.3 Voting Rights. Except as expressly provided in this Agreement, Non-Managing Members will have no voting, approval or consent rights.

5.4 Non-Managing Members Have No Managerial Authority. A Non-Managing Member in his capacity as such will have no power to participate in the management of the Company, except as expressly authorized by this Agreement. No Non-Managing Member, acting solely in his capacity as a Non-Managing Member, is an agent of the Company, nor has any power or authority to bind or act on behalf of the Company in any way, to pledge its credit, or to render it liable for any purpose, nor can any such Non-Managing Member, in such capacity, execute any instrument on behalf of the Company, unless expressly and duly authorized in writing to do so by the Managing Member.

5.5 Member Meetings and Approvals. No annual or regular meetings of the Members are required to be held. If any meetings are held, such meeting will be noticed, held and conducted in accordance with the Act. Any approval of the Members pursuant to this Agreement may be obtained in any manner provided for in the Act.

5.6 Withdrawals or Resignations. No Member may withdraw or resign from the Company except as specifically provided in this Agreement.

5.7 Confidentiality. Members will have access to information about the Company and its business (collectively, "Confidential Information") that is confidential and proprietary to the Company and that constitutes trade secrets. Such information may include business and marketing plans, techniques, and strategies; financial statements of the Company; databases, customer and prospect lists; projections, budgets, and salaries and other costs; know-how, formulae, discoveries, improvements, new products, and theories; and related legal documents. Each Member agrees not to use, publish, disseminate, misappropriate, or otherwise disclose any Confidential Information, either while such Member is a Member of the Company, or thereafter, except as may be required by applicable law. Each Member will take all reasonable precautions to protect the confidential nature of Confidential Information and all other documents or materials entrusted to such Member containing Confidential Information. All files, records, documents, statistical data, lists, and similar items relating to the Company's business are the property of the Company, and each Member agrees to return all of such property to the Company at such time that the Member ceases to be a Member.

5.8 Other Activities. The Members: (i) each acknowledge that Members, their respective Affiliates, and other related persons are or may be involved in other business, investment and professional activities, including serving as officers, directors, advisors and agents of other companies; and (ii) agree that each Member, his respective Affiliates, and other related persons may engage for their own accounts and for the accounts of others in any such ventures and activities (without regard to whether the interests of such ventures and activities conflict with those of the Company) and that (a) neither the Company nor any Member shall have any right by virtue of this Agreement or the existence of the Company in and to such ventures or activities or to the income or profits derived therefrom; and (b) each Member, his respective Affiliates, and other related persons shall have no duty or obligation to make any reports to the Members or the Company with respect to any such ventures or activities.

ARTICLE 6
MANAGEMENT OF THE COMPANY

6.1 Management and Powers Vested in Managing Member.

(a) General Authority and Power. Except as otherwise provided in this Agreement, the business, property and affairs of the Company will be managed by, and all powers of the Company will be exercised by or under the direction of, the Managing Member. Without limiting the generality of this Section 6.1, but subject to the express limitations set forth elsewhere in this Agreement, the Managing Member will have all necessary powers to manage and carry out the purposes, business, property, and affairs of the Company, including, without limitation, the power to exercise on behalf and in the name of the Company all of the powers permitted by law, including, without limitation, the power:

(i) To enter into license agreements, joint venture agreements, and other agreements respecting the Patent and the technology embodied therein;

(ii) To take action as necessary or appropriate to protect and preserve the assets of the Company, including the filing and prosecution of infringement actions;

(iii) To borrow funds and issue evidences of indebtedness on behalf of the Company on either a recourse or nonrecourse basis, and to pledge and hypothecate assets of the Company for such loans;

(iv) To employ from time to time, at the expense of the Company, persons required for the Company's activities, including accountants, attorneys and others, regardless of whether such persons also may be employed by the Managing Member or his Affiliates; to enter into and exercise on behalf of the Company, agreements and contracts with such persons on such terms and for such compensation as the Managing Member, in his sole discretion, determines to be reasonable; and to give receipts, releases, indemnities, and discharges with respect to all of the foregoing and any matter incident thereto as the Managing Member may deem advisable or appropriate;

(v) To purchase, from or through others, contracts of liability, casualty and other insurance that the Managing Member deems advisable, appropriate or convenient for the protection of the assets or affairs of the Company or for any purpose convenient or beneficial to the Company, including policies of insurance insuring the Managing Member and/or the Company against liabilities that may arise out of the Managing Member's management of the Company;

(vi) To cause the Company to sell or transfer all of its assets to a limited partnership, corporation or other entity, including by way of merger, conversion or otherwise;

(vii) To make all tax elections required or permitted to be made by the Company, including elections under Section 754 of the Code;

(viii) To file, conduct and defend legal proceedings of any type, including proceedings against Members, and to compromise and settle any such proceedings, or any claims against any person, including claims against Members, on whatever terms deemed appropriate by the Managing Member;

(ix) To engage in any kind of activity, and to perform and carry out contracts of any kind, necessary to, or in connection with, or incidental to the accomplishment of, the purposes of the Company; and

(x) To otherwise possess, exercise, and enjoy all rights and powers of a limited liability company to the extent permitted under the laws of the State of Delaware.

(b) Right of Others to Rely on Authority of Managing Member. The execution and delivery of any contract or instrument, or the taking of any action, by the Managing Member on behalf of the Company will be sufficient to bind the Company, and will not require the consent of any other Member.

6.2 Obligations of Managing Member. The Managing Member will devote such time as may be necessary for the proper performance of his duties under this Agreement, but the Managing Member will not be required to devote full time to the performance of such duties, nor be prevented from engaging in other activities for profit.

6.3 Expenses and Reimbursements. The Company will pay (or reimburse the Managing Member for) all expenses of the Company, including, without limitation: (A) all salaries, compensation, and fringe benefits of any personnel who may be employed by the Company; (B) all costs of borrowed money, taxes, and assessments with respect to the assets and operations of the Company; and (C) all legal and accounting fees and costs, including all fees and costs incurred in connection with the organization of the Company and the offering of Interests.

6.4 Officers. The Managing Member, at any time by written resolution, may appoint officers to whom he may delegate some or all of his duties, powers and responsibilities, including his specific powers and approval rights hereunder. The officers of the Company, if deemed necessary by the Managing Member, may include, without limitation, a chairperson, a chief executive officer, a president, one or more vice presidents, a secretary (and one or more assistant secretaries), and a chief financial officer or treasurer (and one or more assistants). The officers will serve at the pleasure of the Managing Member. Any individual may hold any number of offices. The general areas of responsibility and specific powers and duties of each officer may be set forth in written resolutions adopted by the Managing Member, which may be revised from time to time. Except as expressly provided in any contract of employment or similar agreement, any officer may be removed, either with or without cause, by the Managing Member at any time. Any officer may resign at any time by giving written notice to the Managing Member.

6.5 Liability and Indemnification of Managing Member.

(a) Limitation on Duties. To the fullest extent permitted by law, whenever in this Agreement the Managing Member approves or disapproves any action (whether in his capacity as Managing Member, as a Member generally, or otherwise), he will be entitled to consider only such interests and factors as he desires and may consider his own interests, and will

have no duty or obligation (fiduciary or otherwise) to give any consideration to any interest of or factors affecting the Company or the other Members. The Company and each Member hereby agrees that the provisions of the preceding sentence, to the extent they restrict or limit the duties (including, without limitation, fiduciary duties) or liabilities of the Managing Member that may otherwise exist at law or in equity, will replace such other duties and liabilities of the Managing Member.

(b) Limitation on Liability. The Managing Member and his agents and Affiliates will not be liable to the Company or to any other Member for any act or omission based upon errors of judgment or other fault in connection with the business or affairs of the Company (including, without limitation, any act or omission in connection with the termination of the Company or the winding up of its affairs or any distribution of its assets in connection therewith), except for any losses, claims, damages, liabilities or expenses that a court of competent jurisdiction finally determines resulted from the fraud or willful violation of law of such person.

(c) Indemnification. The Managing Member and his agents and Affiliates (each, an "Indemnitee") will be indemnified and held harmless by the Company from and against any and all losses, claims, damages, liabilities, expenses, judgments, fines, settlements, and other amounts (including attorneys and expert witness fees and expenses, as such fees and expenses are incurred) arising from all claims, demands, actions, suits or proceedings (civil, criminal, administrative or investigative), in which they may be involved, as a party or otherwise, by reason of their management of the affairs of the Company or rendering of advice or consultation with respect thereto, or which relate to the Company, its properties, business or affairs, whether or not they continue to be such at the time any such liability or expense is paid or incurred; provided, however, that no Indemnitee will be entitled to the foregoing indemnification to the extent a court of competent jurisdiction finally determines that such losses, claims, damages, liabilities, expenses or other amounts resulted from the fraud or willful violation of law of such Indemnitee. The Company may purchase and maintain insurance on behalf of a person who may be entitled to indemnification hereunder against any liability asserted against or incurred by such person in any such capacity or arising out of such person's status as such, if the Managing Member determines to do so.

(d) No Guarantee of Investment. No Indemnitee in any way guarantees the return of any Members' Capital Contributions or a profit for the Members from the operations of the Company. No Indemnitee will have personal liability for the repayment of the Capital Contributions of any Member. Except as otherwise provided in the Act, no Indemnitee will be bound by or personally liable for the expenses, liabilities or obligations of the Company, whether arising in contract, tort or otherwise, solely by reason of acting on behalf of the Company.

(e) Reliance. The Managing Member will be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any of its other Members, officers, employees or committees or by any other person, as to matters the Managing Member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the Company or

any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

6.6 Transactions With Managing Member or Affiliates. The Company may enter into transactions with the Managing Member or his Affiliates without obtaining the consent of the Members, provided that such transactions are on terms no less favorable to the Company than would be available from independent third parties.

6.7 No Removal. The Members will have no right to remove the Managing Member.

ARTICLE 7 BOOKS AND RECORDS; ACCOUNTING; TAX ELECTIONS

7.1 Books and Records. Books and records of the Company will be maintained at the principal office of the Company. The Company will maintain the following books and records:

(a) A current list of the name and last known business, residence or mailing address of each Member, together with the Capital Contributions and Percentage Interests of each Member;

(b) A copy of the Certificate and all amendments thereto;

(c) A copy of this Agreement and all amendments hereto;

(d) A copy of the Company's federal, state and local income tax or information returns and reports, if any, for the six most recent fiscal years;

(e) Financial statements of the Company for the six most recent fiscal years;
and

(f) Such other books and records as deemed appropriate by the Managing Member.

7.2 Inspection of Records.

(a) General. Subject to Section 7.2(b), each Member has the right, on reasonable request, but subject to such Member's agreement to maintain the confidentiality thereof, to:

(i) Inspect and copy (at his expense) during normal business hours and for any purpose reasonably associated with such Member's Interest, any of the Company records required to be maintained by Section 7.1 and such other information regarding the affairs of the Company as is just and reasonable; and

(ii) Obtain from the Company, promptly after they are available, a copy of the Company's federal, state, and local income tax or information returns for each year.

(b) Limitations. Despite anything to the contrary in this Agreement, the Non-Managing Members, will not be entitled to inspect or receive copies of the following:

(i) Internal memoranda of the Managing Member, whether relating to Company matters or any other matters;

(ii) Correspondence and memoranda of advice from attorneys or accountants for the Company or the Managing Member; or

(iii) Trade secrets and customer lists of the Company or the Managing Member, investor information, financial statements of Members, or similar materials, documents, and correspondence.

7.3 Reports. The Managing Member will cause the following to be prepared and provided to each Non-Managing Member:

(a) As soon as practicable after the end of each fiscal year, the information necessary for such Member to complete his federal and state income tax or information returns; and

(b) As soon as practicable after the end of each fiscal year, an annual financial report (which need not be audited) containing a balance sheet as of the end of the year and an income statement.

7.4 Tax Returns and Elections. The Company's tax and accounting year will end on December 31 of each year unless otherwise determined by the Managing Member and permitted by the Code. The Company's accountants will be instructed to prepare and file all required income tax returns for the Company. The Managing Member will make any tax election on behalf of the Company necessary for completion of the Company tax return.

7.5 Tax Matters Partner. The Members will not elect under Section 6231(a)(1)(B)(ii) of the Code to be governed by the "Tax Matter Partner" provisions of the Code. If the Company becomes subject to the provisions of Sections 6221 *et seq.*, the Managing Member will appoint a Tax Matters Partner.

7.6 Withholding and Tax Advances.

(a) Authority To Withhold. To the extent the Company is required by law to withhold or to make tax payments on behalf of or with respect to any Member (e.g., (i) backup withholding, (ii) withholding with respect to Members that are neither citizens nor residents of the United States) ("Tax Advances"), the Company may withhold such amounts and make such tax payments as may be required.

(b) Repayment of Tax Advances. All Tax Advances made on behalf of a Member will, at the option of the Managing Member, either be (i) promptly paid to the Company

by the Member on whose behalf such Tax Advances were made, or (ii) repaid by reducing the amount of the current or next succeeding distribution or distributions which would otherwise have been made to such Member (or, if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such Member). Whenever the Managing Member selects option (ii) pursuant to the preceding sentence for repayment of a Tax Advance by a Member, for all other purposes of this Agreement, such Member will be treated as having received all distributions (whether before or upon liquidation) unreduced by the amount of such Tax Advance.

(c) Indemnification. Each Member hereby agrees to indemnify and hold harmless the Company from and against any liability with respect to Tax Advances made on behalf of or with respect to such Member.

(d) Certification. Each Member will promptly give the Company any certification or affidavit that the Company may request in connection with this Section 7.6.

7.7 Company Funds. The funds of the Company will be deposited in such banking or other financial institutions as the Managing Member will determine, and withdrawals will be made on such signature or signatures as the Managing Member may determine. No other funds will in any way be commingled with such Company funds. All deposits and other funds not needed in the operation of the business may be invested in such investments which the Managing Member reasonably considers appropriate.

ARTICLE 8 AMENDMENTS

8.1 General. Except as otherwise provided herein, any provision of this Agreement may be amended only with the consent of the Managing Member and a Majority in Interest of the Members; provided, however, that, except as expressly permitted in this Agreement, a Non-Managing Member's Percentage Interest may not be reduced in a disproportionate manner from other Members' Percentage Interests without obtaining the prior written consent of that Member.

8.2 Amendments Without Consent of Members. In addition to any amendments otherwise authorized herein, amendments may be made to this Agreement from time to time by the Managing Member, without the consent of any of the other Members: (a) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other change or provision that is not material and does not adversely affect the rights of the Members; (b) to delete or add any provision of this Agreement required to be so deleted or added by any federal agency or by a state "securities" or "corporation" commission or similar body, which addition or deletion is deemed by such agency to be for the benefit or protection of the Members; and (c) to cause the provisions of Article 4 hereof to conform to the Code and any Regulations promulgated thereunder; provided, however, that no amendment will be adopted pursuant to this Section 8.2 unless the adoption thereof does not affect the limited liability of the Members under the Act or the status of the Company as a partnership for federal income tax purposes.

ARTICLE 9
TRANSFERS OF NON-MANAGING MEMBERS' INTERESTS

9.1 General Transfer Conditions. A Non-Managing Member may not Transfer all or any portion of his Interest unless the proposed Transferor or Transferee provides the Managing Member with such of the following documents and assurances as the Managing Member, in his discretion, may require:

(a) A duly executed and acknowledged written assignment in a form approved by the Managing Member specifying the Interest being Transferred;

(b) A written acknowledgement, in a form approved by the Managing Member, executed by each Transferee that such Transferee agrees to be bound by and subject to the provisions of this Agreement;

(c) An opinion of counsel, satisfactory to the Managing Member, that the Transfer will not violate any state or federal securities law, adversely affect either the tax status of the Company or the limited liability of any Member, or otherwise cause any adverse tax consequences to the Company or its Members;

(d) A transfer fee to the Company which is sufficient to cover all reasonable expenses connected with the Transfer, including legal fees; and

(e) Such other documents or instruments as the Managing Member may deem necessary or desirable in connection with such Transfer.

9.2 Consent Requirement. In addition to the requirements set forth in Section 9.1, except as provided in Section 9.3, a Non-Managing Member may not Transfer all or any portion of his Interest without obtaining the prior written consent of the Managing Member, which may be withheld in the Managing Member's absolute discretion.

9.3 Involuntary Transfer. A person may become an assignee of a Member's Interest, without obtaining the consent of the Managing Member, in the case of any Transfer caused by operation of law, including: (a) Transfer caused by a Member's death or legal incapacity; (b) Transfer caused by a Bankruptcy Event; (c) foreclosure (or Transfer instead of foreclosure) against a Member's Interest that was pledged or assigned as security for an obligation; (d) court order; (e) Transfer from the Transferee's spouse under a divorce decree or settlement; or (f) Transfer caused by the dissolution of a Member that is a legal entity. On the occurrence of any of these events, the Transferee will have only the rights of an unadmitted assignee under Section 9.4, and will not be admitted as a substitute Member unless such Transferee is approved as provided in Section 9.5. Any Transferee will be subject to the provisions of this Agreement.

9.4 Rights of Unadmitted Assignees. A person who acquires all or any portion of a Non-Managing Member's Interest (whether pursuant to Section 9.2 or 9.3 above), but who is not admitted as a substitute Member pursuant to Section 9.5 will be entitled only to distributions and allocations with respect to such Transferred Interest in accordance with this Agreement, and will have no right to any information or accounting of the affairs of the Company, will not be entitled

to inspect the books or records of the Company, and will not have any of the voting or other rights of a Member under the Act or this Agreement.

9.5 Substitute Member. A Transferee of a Non-Managing Member's Interest (whether pursuant to Section 9.2 or 9.3 above), may become a substitute Member only if the Managing Member consents in writing to the Transfer, which consent is within the sole discretion of the Managing Member. Furthermore, no Transferee will be considered admitted as a substitute Member unless and until such Transferee executes and delivers to the Company counterpart signature pages to this Agreement.

9.6 Effective Date of Transfer. Unless otherwise provided in this Agreement or in the Transfer documentation, any Transfer of a Member's Interest made in compliance with this Article 9 will be effective as of the close of business on the day on which all documentation required by this Article 9 has been received and accepted by the Company.

9.7 Effect of Violation. Any purported Transfer in violation of this Article 9 will be null and void and will not bind or be recognized by the Company.

9.8 Options on Certain Events.

(a) Option to Repurchase Interest. Upon the occurrence of a Member Termination Event as to a Non-Managing Member (an "affected Member"), the Managing Member will have the right, but not the obligation, to purchase and/or cause the Company to redeem the affected Member's Interest (the "affected Interest"), in accordance with this Section 9.8.

(b) Effective Date. The effective date of any purchase and/or redemption pursuant to this Section 9.8 will be the date on which the event giving rise to the purchase and/or redemption option occurs (the "Event Date"); provided that, if the date the Company receives actual notice of the occurrence of such event (the "Notice Date") occurs after the Event Date, the Company may elect, in the discretion of the Managing Member, to have the effective date be either the Event Date or the Notice Date. Notwithstanding that payment on account of any purchase and/or redemption may be made after the effective date thereof, any Member whose entire Interest is purchased and/or redeemed will not be considered a Member for any purpose after the effective date of such purchase and/or redemption.

(c) Exercise of Option. The Managing Member and/or the Company may elect to exercise their options to purchase and/or redeem the affected Interest at any time on or before the expiration of the 90th day following the later of the Event Date or the Notice Date. In order to exercise the option, the Managing Member must deliver Notice (an "Exercise Notice") to the affected Member prior to the expiration of the option, setting forth the event giving rise to the option, the Event Date and, if later, the Notice Date, the portion of the affected Interest the Managing Member is electing to purchase, the portion of the affected Interest that the Company is electing to redeem, and the proposed closing date of such purchase and/or redemption.

(d) Purchase Price. The amount paid (the "Purchase Price") for an affected Interest will be the "fair market value" of the affected Interest as of the effective date of the purchase and/or redemption. If not all of the affected Interest is being purchased and/or redeemed,

the Purchase Price will be proportionately reduced to reflect the percentage of the affected Interest that is being retained by the affected Member. For purposes of this Section 9.8, the "fair market value" of the affected Interest will be determined by an appraisal performed by a business valuation expert selected by the Managing Member who is qualified to appraise businesses similar to the Company, and will take into account appropriate discounts for lack of marketability and control.

(e) Terms. The Purchase Price to be paid upon the purchase and/or redemption of an affected Interest will be paid in such combination of cash and promissory notes ("Purchase Notes") as the Managing Member may elect, provided that at least 20% of the Purchase Price must be paid in cash at the closing, and any Purchase Note(s) for the balance shall bear interest from the effective date of the purchase and/or redemption at the Company's borrowing rate in effect as of the effective date and shall be payable in equal annual or more frequent installments over no more than five (5) years, and will be prepayable in whole or in part, without penalty.

(f) Closing. The closing of any purchase and/or redemption pursuant to the exercise of an option granted by this Section 9.8 will be held at the offices of the Company within 30 days following the completion of the appraisal referred to in Section 9.8(d). The Managing Member and the Company will each deliver at the closing their respective shares of any cash portion of the Purchase Price, and their respective Purchase Notes for their respective shares of the balance of the Purchase Price. Any portion of the affected Interest not purchased or redeemed will continue to be subject to the provisions of this Agreement, including this Section 9.8.

ARTICLE 10 TRANSFER OF MANAGING MEMBER'S INTEREST

10.1 Bankruptcy Event, Dissolution, Death or Incompetency. Because the occurrence of a Member Termination Event as to the Managing Member would render the Managing Member incapable of performing his duties under this Agreement, the Managing Member automatically will cease to be the managing member upon the occurrence of any such event. If the Managing Member ceases to be the managing member pursuant to this Section 10.1, and the Company is continued pursuant to Section 11.1(c), the Managing Member's Interest will be either (i) converted into a Non-Managing Member's Interest in accordance with Section 10.4, or (ii) purchased in accordance with Section 10.5.

10.2 Transfer of Managing Member's Interest. The Managing Member will not Transfer all or any part of his Interest in the Company to any person except (a) to a Transferee approved by a Majority in Interest of the other Members, (b) to an Affiliate of the Managing Member, or (c) if the Managing Member is an entity, to a successor entity that receives more than fifty percent (50%) of the Managing Member's equity interests or assets in connection with a merger, sale, reorganization or similar transaction with respect to the Managing Member. Any entity to which the Managing Member's Interest in the Company is transferred in compliance with this Section 10.2 will be substituted as the Managing Member by the filing of an appropriate amendment to this Agreement.

10.3 Withdrawal of Managing Member. The Managing Member may withdraw as the Managing Member without the consent of the other Members. If the Managing Member does withdraw pursuant to this Section 10.3, the Managing Member's Interest in the Company will be converted to a Non-Managing Member's Interest pursuant to Section 10.4.

10.4 Conversion of Managing Member's Interest. Upon the cessation of the Managing Member's status as a managing member for any reason other than as a result of a Transfer of such Managing Member's Interest pursuant to Section 10.2, unless the Managing Member or his personal representative or successor in interest exercise his or their option pursuant to Section 10.5, such Managing Member's Interest will be converted into a Non-Managing Member's Interest. In the event of such a conversion, the Managing Member will lose those rights accorded a managing member under this Agreement and will assume the rights of a Non-Managing Member hereunder.

10.5 Option to Sell.

(a) Member Termination Event as to Managing Member. Provided that the Company is not dissolved pursuant to Section 11.1, upon the occurrence of a Member Termination Event as to the Managing Member, the Managing Member or his personal representative or successor in interest, as the case may be, will have the option, but not the obligation, for 90 days after the occurrence of the Member Termination Event, to sell the Managing Member's Interest to the Company, and in such event, the Company will have the obligation to purchase the Managing Member's Interest in accordance with terms of this Section 10.5.

(b) Effective Date. The effective date of the purchase pursuant to this Section 10.5 will be the date on which the option pursuant to this Section 10.5 is exercised (the "Option Date"). Notwithstanding that payment on account of the purchase may be made after the Option Date, the Managing Member will not be considered a Member for any purpose after the Option Date.

(c) Purchase Price. The Purchase Price for the Managing Member's Interest will be the "fair market value" of the Interest as of the Option Date. For purposes of this Section 10.5, the "fair market value" of the Managing Member's Interest will be determined by an appraisal performed by a business valuation expert who is qualified to appraise businesses similar to the Company, and who is selected by agreement between the Managing Member (or his personal representative or successors in interest) and a Majority in Interest of the Non-Managing Members, and will take into account appropriate discounts for lack of marketability, and appropriate premiums applicable to a controlling interest.

(d) Terms. The Purchase Price to be paid upon the sale of the Managing Member's Interest pursuant to this Section 10.5 will be paid in such combination of cash and promissory notes ("Purchase Notes") as a Majority in Interest of the Non-Managing Members may elect, provided that at least 20% of the Purchase Price must be paid in cash at the closing, and any Purchase Note(s) for the balance shall bear interest from the Option Date at the Company's borrowing rate in effect as of the Option Date and shall be payable in equal annual or more frequent installments over no more than five (5) years, and will be prepayable in whole or in part, without penalty.

(e) Closing. The closing of any sale pursuant this Section 10.5 will be held at the offices of the Company within 30 days following the completion of the appraisal. The Company will deliver at the closing the cash portion of the Purchase Price and any Purchase Notes for the balance of the Purchase Price.

ARTICLE 11 DISSOLUTION

11.1 Dissolution. The Company will be dissolved and its affairs will be wound up upon the earliest to occur of the following:

- (a) The sale or other disposition of all or substantially all of the Company's assets and distribution of the proceeds of such sale or disposition;
- (b) The election of the Managing Member to dissolve the Company and terminate its business;
- (c) The occurrence of a Member Termination Event as to the Managing Member, unless a Majority in Interest of the Non-Managing Members elect to continue the Company and appoint a new managing member within 90 days of the relevant event; or
- (d) Any other event which is specified in the Certificate or under applicable law as an event causing the dissolution of the Company.

11.2 Winding Up.

(a) Application of Assets. Upon a dissolution of the Company, the Managing Member will take full account of the Company's liabilities and assets, and the Company's assets will be liquidated as promptly as is consistent with obtaining the fair value thereof. The proceeds from the liquidation of the Company's assets will be applied and distributed in the following order:

- (i) First, to the payment and discharge of all of the Company's debts and liabilities (including debts and liabilities to the Members, to the extent permitted by law), including the establishment of any necessary reserves; and
- (ii) The balance, if any, to the Members having positive balances in their Capital Accounts (after giving effect to all contributions, distributions and allocations for all periods, including the period during which such distribution occurs), in the proportion that the positive balance in each Member's Capital Account bears to the sum of all Capital Accounts having positive balances.

(b) Contributed Assets. Upon the dissolution and liquidation of the Company, any other non-cash assets (including the Patent) that were contributed to the Company by one or more Members and that continue to be owned by the Company as of the time of dissolution, will to the extent possible be distributed in kind upon liquidation of the Company to

the contributing Member(s) at their then book value, in partial satisfaction of each such Member's right to receive distributions under Section 11.2(a)(ii).

(c) Timing. Distributions in liquidation will be made by the end of the taxable year in which the liquidation occurs or, if later, within ninety (90) days of the liquidating event and will otherwise comply with Regulations Section 1.704-1(b).

(d) No Obligation to Restore Deficit. If any Member has a deficit balance in such Member's Capital Account (after taking into account all Capital Account adjustments for the Company's taxable year in which the liquidation occurs), such Member will have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit will not be considered a debt owed to the Company or to any other person for any purpose whatsoever.

ARTICLE 12 INVESTMENT REPRESENTATIONS

Each Non-Managing Member hereby represents, warrants and agrees with the Managing Member and the Company as follows:

12.1 Exemptions. Such Member acknowledges that the Interests are being issued pursuant to exemptions from registration under the Securities Act of 1933 (the "Securities Act") and exemptions from qualification under the securities laws of certain states for transactions not involving any public offering, and that the Company is relying on the representations and warranties included herein in connection with the perfection of such exemptions.

12.2 Financial Means. Such Member has the financial ability to bear the economic risk of this investment (including its possible loss), has adequate means of providing for current needs and contingencies, and has no need for liquidity with respect to this investment.

12.3 Sophistication. Such Member has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of this investment and has obtained, in such Member's judgment, sufficient information from the Company to evaluate the merits and risks of this investment.

12.4 Investment Intent. Such Member is acquiring the Interest for such Member's own account, for investment purposes only, and not with a view to the sale or distribution of any securities in violation of the Securities Act.

12.5 No Advertising. Such Member has not seen, received, been presented with or been solicited by any leaflet, public promotional meeting, newspaper or magazine article or advertisement, radio or television advertisement, or any other form of advertising or general solicitation with respect to the sale of the Interest.

12.6 Information. Such Member has been given the opportunity to ask questions of, and receive answers from, representatives of the Company concerning the terms and conditions of

an investment in the Company and other matters pertaining to the Company, and has received all the information he or she has requested from the Company and considers necessary or appropriate for deciding whether to invest.

12.7 Transfer Restrictions. Such Member understands that the Interests have not been registered under the Securities Act or qualified under the securities laws of any state, and therefore cannot be transferred, resold, pledged, hypothecated, assigned, or otherwise disposed of unless subsequently registered or qualified under such Securities Act and under applicable state securities laws, or an exemption from registration and/or qualification is available. Such Member will not sell or otherwise transfer such securities without registration under the Securities Act or pursuant to an exemption therefrom. In addition, such Member understands that this Agreement imposes substantial additional restrictions on the transferability of the Interests; there is no public market for the Interests; none is expected to develop; and such Member may not be able to liquidate his Interest in the Company.

12.8 Investment Risk. Such Member acknowledges that the Interest is a speculative investment which involves a substantial degree of risk of loss of his entire investment in the Company, that he understands the risk factors related to any purchase of the Interest, that the Company is newly organized and has no financial or operating history, and that any projections for the Company involve numerous assumptions, are inherently uncertain, and should not be used as a substantial basis for determining to acquire the Interest.

12.9 No Representations By Company. Neither the Managing Member nor any officer, agent or employee of the Company, nor any other person has at any time expressly or implicitly represented, guaranteed or warranted to such Member (a) that a percentage of profit and/or amount or type of consideration will be realized as a result of an investment in the Interest, (b) that past performance or experience on the part of any person in any way indicates the predictable results of the ownership of the Interest or of the overall Company business, (c) that any cash distributions from Company operations or otherwise will be made to the Members by any specific date or will be made at all, or (d) that any specific tax benefits will accrue as a result of an investment in the Company.

12.10 Consultation with Attorney. Such Member understands that he has not been represented in this transaction by Howard Rice Nemerovski Canady Falk & Rabkin, A Professional Corporation, which has been counsel to David J. Talaber. Such Member has been advised to consult with his own attorney regarding all legal and other matters concerning an investment in the Company, including the tax consequences of participating in the Company, and has done so, to the extent he considers necessary. Such Member acknowledges that the tax consequences to him of investing in the Company will depend on his particular circumstances, and neither the Company, the Managing Member, nor any other person will be responsible or liable for the tax consequences to him of an investment in the Company. Such Member will look solely to, and rely upon, his own advisers with respect to the legal, financial and tax consequences of this investment.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Power of Attorney.

(a) Appointment. Each Non-Managing Member, by the execution of this Agreement, irrevocably constitutes and appoints the Managing Member his true and lawful attorney-in-fact with full power and authority in his name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including but not limited to:

(i) All certificates and other instruments (including counterparts of this Agreement), and any amendment thereof, which the Managing Member deems appropriate to form, qualify, or continue the Company as a limited liability company in any jurisdiction in which the Company may conduct business or in which such formation, qualification or continuation is, in the opinion of the Managing Member, necessary or desirable to protect the limited liability of the Members;

(ii) All amendments to this Agreement adopted in accordance with the terms of this Agreement;

(iii) All documents necessary to transfer a Member's Interest in the Company pursuant to the terms hereof; and

(iv) All conveyances and other instruments which the Managing Member deems appropriate to reflect the dissolution and termination of the Company in accordance with the terms hereof.

(b) Effect. This power of attorney is irrevocable, is coupled with an interest, and will survive a Member's bankruptcy, death, adjudication of incompetence, insanity or dissolution.

13.2 Counterparts. This Agreement may be executed in several counterparts, and as executed will constitute one agreement, binding on all of the parties hereto.

13.3 Successors and Assigns. Except as otherwise provided herein, the terms and provisions of this Agreement will be binding upon and will inure to the benefit of the successors and assigns of the parties hereto.

13.4 Notices. All notices required or permitted under this Agreement will be given in writing to the person entitled thereto by personal service, mail, overnight courier or telecopy to the address or telecopy number maintained by the Company for such person. All notices will be effective upon receipt; provided, however, that any notice sent by certified or registered mail to the address so maintained will be deemed received on the earlier of actual receipt or three business days after mailing.

13.5 Benefits. Except as expressly provided herein, this Agreement is entered into for the sole and exclusive benefit of the parties hereto and will not be interpreted in such a manner as to give rise to or create any rights or benefits of or for any person not a party hereto.

13.6 Severability. If any covenant, condition, term or provision of this Agreement is illegal or if the application thereof to any person will to any extent be judicially determined to be invalid or unenforceable, then the remainder of this Agreement, or the application of such covenants, condition, term or provision to persons or in circumstances other than those held invalid or unenforceable, will not be affected thereby, and each covenant, term, condition and provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

13.7 Complete Agreement. This Agreement and the Certificate constitute the complete agreement between the parties concerning the subject matters in such documents.

13.8 Governing Law. This Agreement will be governed by and interpreted under the laws of the State of Delaware applicable to contracts entered into and performed entirely within the State of Delaware.

13.9 Gender, Number and Headings. As used in this Agreement, the masculine gender will include the feminine and neuter, and vice versa, as the context so requires; and the singular number will include the plural, and vice versa, as the context so requires. As used in this Agreement, section headings are for the convenience of reference only and will not be used to modify, interpret, limit, expand or construe the terms of this Agreement.

13.10 Cross-References. All cross-references in this Agreement, unless specifically directed to another agreement or document or statute, refer to provisions within this Agreement.

13.11 Interpretation. Each Member has had the opportunity to consult counsel in connection with the preparation and negotiation of this Agreement, and this Agreement will be construed according to its fair language. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

13.12 Costs and Expenses of Members. Except as expressly provided otherwise in this Agreement, the Members each will bear their own costs and expenses incurred in connection with their investment in the Company.

13.13 Further Assurances. Each Member will execute such deeds, assignments, endorsements, evidences of transfer and other instruments and documents which will give such further assurances as will be necessary or desirable to perform such Member's obligations hereunder or to effectuate and carry out the business of the Company.

13.14 Dispute Resolution. Any dispute between the parties in connection with or related to this Agreement will be resolved in the following manner:

(a) The parties will meet and attempt to resolve such dispute within ten (10) days.

(b) If the parties are unable to resolve the dispute, the parties will submit the dispute to binding arbitration according to the following rules:

(i) Arbitration will be held in the state in which the Company maintains its principal office, in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA");

(ii) The arbitration will be conducted by a single arbitrator;

(iii) The arbitration will be conducted in an expedited manner, designed to preserve the confidentiality of the dispute;

(iv) The decision of the arbitrator will be final and binding in the absence of manifest fraud; and

(v) Each party to the dispute will share equally the fees and expenses of the arbitrator.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.

MANAGING MEMBER:

NON-MANAGING MEMBERS:

David J. Talaber

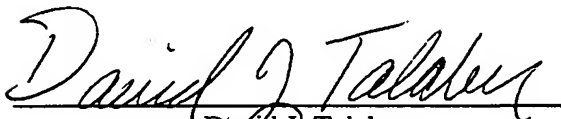
James R. Lloyd, M.D.

Mark Robinson

Mark Schroeder, Esq.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.

MANAGING MEMBER:



David J. Talaber

NON-MANAGING MEMBERS:

James R. Lloyd, M.D.

Mark Robinson

Mark Schroeder, Esq.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.

MANAGING MEMBER:

David J. Talaber

NON-MANAGING MEMBERS:

James R. Lloyd, M.D.
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MANAGING MEMBER:

David J. Talaber

NON-MANAGING MEMBERS:

James R. Lloyd, M.D.

Mark Robinson

Mark L. Schroeder

Mark Schroeder, Esq.

APPENDIX A
ACANTHA, LLC
MEMBERS', CAPITAL CONTRIBUTIONS AND PERCENTAGE INTERESTS
EFFECTIVE MAY 12, 2002

	PRIOR ADVANCES	CASH CONTRIBUTED AS OF EFFECTIVE DATE	UNFUNDED CAPITAL COMMITMENT	TOTAL CAPITAL CONTRIBUTION	PERCENTAGE INTERESTS
<u>MANAGING MEMBER</u>					
David J. Talaber 5185 Charlotte Way Livermore, CA 94550	\$100,000	0	\$67,000	\$167,000	67%
<u>NON-MANAGING MEMBERS</u>					
James R. Lloyd, M.D. 1080 Circle Drive Elm Grove, WI 53122	\$1,000	\$15,417.91	\$11,000	\$27,417.91	11%
Mark Robinson 1416 Park Place Southlake, TX 76092	\$1,000	\$15,417.91	\$11,000	\$27,417.91	11%
Mark Schroeder, Esq. 201 N. Arlington Heights Rd. Arlington Heights, IL 60004	\$1,000	\$15,417.91	\$11,000	\$27,417.91	11%
<u>TOTAL</u>	<u>\$103,000</u>	<u>\$46,253.73</u>	<u>\$100,000</u>	<u>\$249,253.73</u>	<u>100%</u>

EXHIBIT A
PATENT ASSIGNMENT



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